87-198

Supreme Court, U.S.
FILED
JUL 28 1987
JOSEPH F. SPANIOL, JR.
CLERK

CIVIL CASE NO._____

IN THE
SUPREME COURT OF THE UNITED STATES

JUNE TERM 1987

THOMAS R. SERRANO
Plaintiff Petitioner

Vs.

CITY OF GARY, et al.
Defendant Respondent

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Thomas R. Serrano (Pro-se)
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Highland, Indiana 46322
Telephone: (219) 924-9829

BEST AVAILABLE COPY

QUESTION PRESENTED

1. Whether it was abuse of discretion and in violation of his constitutional rights for the District Court to deprive the plaintiff of a Trial by Jury (as demanded). Was it improper to refuse to compel the defendants to provide names of witnesses (Police Officers) actually present at the scene.....and to refuse to compel defendants to provide available information (relevant and indispensable) to be used in the trial.

2. Was it abuse of discretion for the District Court to dismiss Cause H 83-50 under Rule 41(b) of the Fed.R.Civ.P. and to deny motion for a New Trial....and.... was it improper for the Court of Appeals to Affirm the Judgment of the District Court, disregarding the contradicting facts of the record and the testimony of Witnesses during the trial.

PARTIES TO THIS PROCEEDING:

Thomas R. Serrano Vs. City of Gary, Police Officers Charmayne McClarine, George Wilford and Orlando Phillips

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(con't)

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CASES

"For a waiver of a Federal Constitutional Right, it must be clearly established that an intentional relinquishment of the right or privilege known has taken place." (State Vs. Brown 1981-442) (N.E. 2nd. 475) (2 Ohio App. 3rd-400 Sect. 1) - - - 7

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ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Thomas R. Serrano, Plaintiff Petitioner proceeding on a Petition for Writ of Certiorari to review the Judgment of the United States District Court of the Northern District of Indiana and the Judgment of the United States Court of Appeals for the Seventh Circuit.

JURISDICTION OF THE COURTS

The United States District Court of the Northern District of Indiana exercises jurisdiction persuant to 28 U.S.C. 1331 and 28 U.S.C. 1343 which gives jurisdiction to the Court to determine cases filed under 42 U.S.C. 1983. Civil cases on appeal are permitted by right from a United States District Court to the United States Court of Appeals under Rule (4) of the Rules of Appellate Procedure.

On April 2, 1987 the United States Court of Appeals issued a Judgment and Order stating: "On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, with costs, in accordance with the order of this court entered this date."

The Jurisdiction of the United States Supreme Court is invoked under 28 U.S.C. 2101 and Rule 17.1.(a) of the Rules of the Supreme Court, stating:

> "A review of Writ of Certiorari is not a matter of right but of Judicial discretion, and will be granted (among other reasons) when a Federal Court of Appeals has so far departed from the

accepted and usual course of Judicial Proceedings, or so far sanctioned such a departure by a lower Court, as to call for an excercise of this Court's power of supervision."

CONSTITUTIONAL AMENDMENTS

AMENDMENT IV (1791)

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT VII (1791)

"In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

AMENDMENT XIV (1868)

SECTION 1. "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

NATURE OF THE CASE

On January 18, 1983 the Plaintiff, Thomas R. Serrano brought this action (H 83-50) to the United States District Court of the Northern District of Indiana VS the City of Gary, Police Officers Charmayne Mc Clarine, George Wilford and Orlando Phillips for Civil and Constitutional violations under 42 U.S.C. 1983.

a) The Plaintiff contended that Police Officers McClarine, Wilford and Phillips under color of State Law and as Police Officers of the City of Gary, illegally and maliciously assaulted, battered and arrested him in his private business and home, without a Warrant and without Probable Cause, in violation of his 4th Amendment (unreasonable searches and seizures) and his Civil Rights, protected by the 14th Amendment to the Constitution of the United States.

REF PAGE 4

b) The Plaintiff was transported to the police station where he was incarcerated for three days and three nights without bail, without a hearing and later on, prosecuted for a crime which he had not committed, using a manufactured police

report and a deceiving affidavit.

c) That the defendants conspired to arrest the plaintiff for revenge and self satisfaction and in retaliation for past parking incidents between Officer McClarine and the plaintiff.

d) That the defendants initiated malicious prosecution against the plaintiff and refused to appear in court to testify as witnesses, causing great inconvenience to the plaintiff. The case was dismissed at the request of the plaintiff for failure of the Police to appear as witnesses.

e) The plaintiff contended that the police officers, in violation of his Constitutional Rights, had caused him to suffer humiliation, ridicule, confusion, embarrasment, mental anguish, personal discomfort, and permanent arrest record that hurt his reputation.

f) That the plaintiff was demanding Judgment for Five Million Dollars ($5,000,000) in compensatory damages plus all expenses originated from this case from the City of Gary, and was asking Fifty Thousand Dollars ($50,000) in punitive damages from each one of the co-defendants.

ARGUMENT

1) This case is being brought to the United States Supreme Court as a Petition for Writ of Certiorari to review the Judgment (Cause No. 86-2393) of the United States Court of Appeals, and the Judgment (Cause No H83-50) of the United States District Court.

The Plaintiff Petitioner contends (persuant to Rule 17.1.(a) that the United States District Court for the Northern District of Indiana has departed from the accepted and usual course of judicial proceedings and the United States Court of Appeals for the Seventh Circuit so far has santioned such departure as follows:

a) On June 13, 1985 the United States District Court issued an order to enter Cause No. H83-50 on the Docket Record as a Bench/Jury Trial. (A-11)

On June 17, 1985 a petition from the plaintiff demanding a Jury Trial came up for consideration and was denied on the grounds that the plaintiff had waived the right to Jury Trial.

The plaintiff (Thomas R. Serrano) did not waive the Right to Jury Trial (one

(con't)

does not waive what one demands) and Cause H83-50 was already scheduled on the Docket Record (item No. 20) as a Bench/ Jury Trial when the Petition came up for consideration.

WAIVER

> "For a waiver of a Federal Constitutional Right, it must be clearly established that an intentional relinquishment of the right or privilege known has taken place." (State Vs. Brown 1982-442) (N.E. 2nd. 475) (2 Ohio App. 3rd.-400 Sect. 1)

The District Court deprived the plaintiff of a Constitutional Right secured by the 7th Amendment to the Constitutiona of the United States.

AMENDMENT VII (1791)

> "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, that according to the rules of the common law."

ARGUMENT

2) On January 30, 1986 the Court issued an Order compelling the plaintiff and the defendants to cooperate and provide for each other discovery material indispensable for the preparation of the Pre-trial Order and the case in general. (A15, A16)

b) On February 3, 1986 a new order was issued (Ex-Parte, and three days after the deadline for Discovery had elapsed) vacating only the part of the Order that compelled the defendants to provide material for the plaintiff. (A13,A14)

c) The defendants never provided any of the information requested by the plaintiff and the District Court did not Compel the defendants to do so,....depriving the plaintiff of relevant and indispensable information of Police Officers (Witnesses) present at the time of the arrest.

d) The Court erred by stating that the plaintiff had not answered to the defendants Motion to Compel. Ref. page A17 A18

ARGUMENT

3) In order to prove that there was no Probable Cause to arrest the plaintiff, Officer McClarine (the officer who made the arrest, made the Police Report, signed the Affidavit for Probable Cause and prosecuted the plaintiff with the help of two other officers) was questioned during the trial as follows:

Q So you went inside the building, follow Mr. Serrano that had gone already into the building? (Trans. P 22, L 8)

A Correct.

Q Any reason why Mr. Serrano was going into the building?

A Say that again.

Q Was he running away from the commotion? Was he trying to get something to come back out?

A Sorry. I do not know exactly what you were trying to do, but I was trying to talk to you, and you went into the building.

Q By any chance Mr. Serrano was impolite, did he say anything that was not quite right, insulting or anything to you or to any of the....

(con't)

A Sir, I feel you were impolite and you did not treat me as an officer when you walked away from me when I was trying to talk to you.

Q What did Mr. Serrano do that caused him to be impolite?

A Sir, you did not give me the respect as an officer. (Trans. P 22, L 14)

Q Officer, what was the charge? What did Mr. Serrano do that you had the right to arrest him?

A Sir I did not, you did not respond to me when I was trying to get your attention. (Trans. P 11, L 4)

Q You went inside the building conversing with another officer?

A Yes Sir. (Trans. P 24, L 5)

Q Then two police officers went in after Mr. Serrano, somebody else and you?

A I can't count how many, I just know I was conversing with one particular officer and placing you under arrest. (Trans. P 24, L 10)

POLICE REPORT

"Officer McClarine responded to a disturbance at the rear of 804 Broadway in which she observed the defendant engaged in a physical fight with . . . Mr. Jacob Walton. The defendant was very belligerant and out of control and had to be subdued by officer Wilford and officer Phillips. The defendant was advised of his rights and charged with the above (P.C. Resisting Disorderly)"

Police Officer Charmayne McClarine (whose testimony has been stated above) Defendant, arresting officer and witness, contradicted her own Police Report and her own Affidavit signed for Probable Cause. Officer George Wilford also contradicted the Police Report and the Affidavit for Probable Cause by stating that ...."He did not take part on the arrest."

ARGUMENT

4) To prove that there had been assault and battery at the time of the arrest, officer Orlando Phillips (defendant) was interrogated on the witness stand as follows:

THE COURT: Then what did he do?

A He in turn went back to his store, that is why myself, and Hecht went and grabbed him out. He was holding the door facing, he did not want to come out.

THE COURT: He was holding the door facing?

A Yeah, we was dragging him out.

Q He was closing the door to prevent you from going in?

A You were trying to prevent yourself from coming out. (Trans. P 73, L 11)

Q Did you assault Mr. Serrano on the process of arresting him?

A We dragged you out the door. You were holding on to your door, thats right. (Trans. P 78, L 11)

The testimony of Orlando Phillips (above) defendant, arresting officer and witness, serves to prove that (con't)

Thomas R. Serrano (the plaintiff) was arrested in his store and home and dragged out the door during the arrest. The testimony also contradicts the Police Report and Affadavit for Probable Cause.

ARGUMENT

5) To prove that the defendants had assaulted Mr. Serrano, Mr. Richard Comer was called to testify under oath as follows:

Q Could you please describe the form, the way, what....how was Mr. Serrano being brougnt out of his store, could you tell the Court?

A Well, the thing that is most vivid in my mind is that the officer seemingly was trying to restrain you, and it seems to me as though he was trying to....trying to hold you up to bring....to bring you out because you were attempting not to come out, and I think at that point it appeared as though he had kind....he had lifted you in the air to bring you out of the store, as I was looking at what was transpiring.

(Trans. p 139, L 13-16)

A He had you up in the air.

Q Up in the air?

A An he was attempting to bring you out of the store. Not attempting... he brought you out of the store.

(con't) (Trans. P 140, L 19)

THE COURT: Just describe what you saw.

A Well what I saw at the point of what seem to be was an arrest, I saw Mr. Serrano being brought out of the store by the arresting officer.

(Trans. P 149, L 20)

Q I understant that but can you tell me specifically what physical action, if any, did Mr. Serrano exhibit?

A Well, the only thing I saw....well, was that the officer had Mr. Serrano off of the ground, he was...he was being held up and brought out.

(Trans. P 150, L 1)

ARGUMENT

6) To prove that Mr. Serrano had been incarcerated illegally and in violation of the Due Process Clause of the 14th Amendment, Officer George Wilford (defendant) was questioned under oath as follows:

Q When you went to the police station, what did you do with Mr. Serrano?
A As I recall I pulled into the station, assisted Mr. Serrano out of the vehicle into the detention cell.
Q And you locked him in?
A Lock him in.
Q Is that a common procedure?
A Common procedure.
Q You said you did'nt take any part on the arrest?
A No. (Trial Trans. P 94, L15)

"To detain a person under custody for any reason other that to take him to a magistrate is illegal."

"Newhall vs Egan 28-R.I. 584"

"Quoted by Gordon J. on Cominsky vs Durant 12A2d. 652 R.I. 1940"

ARGUMENT

7) The defendants, under color of State Law, as police officers of the City of Gary, prosecuted the Plaintiff on their own initiative as a group using a fabricated Police Report and deceiving Affidavit, in violation of his Civil Rights, protected by the Due Process Clause of the 14th Amendment to the Constitution of the United States.

AFFIDAVIT FOR PROBABLE CAUSE

"Officer C. McClarine responded to a disturbance at the rear of the above location in which the officer observed the defendant engaged in a physical fight with Mr. J. Walton. The defendant was very belligerant and out of control and had to be subdued by officer Wilford and officer Phillips.
The defendant was advised of his rights and charged with the above."

ARGUMENT

8) On its No. 4 Conclusion of Law, of its Order of the Judgment, the United States District Court states:

> "To hold a municipality liable for a violation of 42 U.S.C. 1983 the plaintiff must establish that the action of the employee which deprived him of his Federal Rights was the result of a policy, practice or custom of the municipality. (Monell vs Department of Social Services of City of New York 436 U.S. 658 1978).
> Serrano did establish that the Defendant Police Officers at all times acted pursuant to the policies and practices of the City of Gary Police Department. Thus, if the Police Officer's conduct had deprived the Plaintiff of a federal right, the City of Gary could also have been held liable under 42 U.S.C. 1983."

a) The Plaintiff was arrested in his business and home, without a Warrant and without Probable Cause, in violation of his Civil and Constitutional Rights, under Unreasonable Searches and Seizures Clause of the 4th Amendment and protected by the Due Process Clause of the 14th Amendment to the Constitution of the United States.

(con't)

b) That in the Process of arresting him, the Plaintiff was assaulted, battered, and carried out of his building and home, in violation of his Civil and Constitutional Rights protected by the Due Process Clause of the 14th Amendment to the Constitution of the United States.

c) That the Plaintiff was transported to the police station, incarcerated without bail, without a hearing, for three days and three nights and then released on his own recognisance. That violated the Due Process Clause (Deprivation of Liberty without Due Process of Law) of the 14th Amendment to the Constitution of the United States.

ARGUMENT

9) The District Court's dismissal of Cause No. H83-50 (Thomas R. Serrano vs. City of Gary, Officers Charmayne McClarine, George Wilford and Orlando Phillips) was not supported by the evidence on the record.

a) Rule 52 of the F.R.C.P. requires the Court to provide Findings of Facts and Conclusions of Law to support the Judgment on an involuntary dismissal.

b) The Findings of Facts in the Order of the Judgment are neither material nor relevant, and the Conclussions of Law are not applicable in many cases, under 42 U.S.C. 1983.

c) Findings of Facts did not show that the defendants had a Warrant at the time of the Arrest or that the defendants took the plaintiff to a Magistrate to be charged legally or be released promptly, or that the plaintiff had the opportunity to challenge the accusation, or that the police did all they could to have the plaintiff out on bail.

(con't)

d) Neither the Police Report nor the Affidavit was supported by the evidence, and that if the accusation is not true, there is no Probable Cause.

ARGUMENT

10) The United States Appeals Court failed to address plaintiff's questions and instead, chose to affirm the decision of the District Court. The Appeals Court based its conclusion on Findings of Facts that are either irrelevant or immaterial.

The testimony of the defendants contradict the charge for which the plaintiff was arrested. Consequently, if the charges on the Police Report and the Affidavit are not true, there is no Probable Cause.

Officer McClarine was asked under oath if she knew the reason why Mr.Serrano had gone into the building and her answer was...."Sorry, I do not know exactly what you were trying to do, but I was trying to talk to you and you went into the building." (Trial Trans. P 22, L 13)

ARGUMENT

11) The determination of the Appeals Court to Affirm was based partly on the District Court's fifth Conclusion of Law in support of the involuntary dismissal of Cause H83-50, which is not supported by the evidence.

5th Conclusion of Law

> "Serrano claims that the defendants deprived him of his Fourth Amendment right to be free from unreasonable seizures by arresting him without a warrant from a private business. The evidence at trial established that Serrano was arrested in the doorway of his store after he ran from police officers in the alley of 804 Broadway. The Gary City Court, a court of competent jurisdiction, has determined that the officers had probable cause to believe that Serrano has committed the crimes of disorderly conduct and resisting arrest. Serrano had a full and fair opportunity to litigate the probable cause issue in the criminal proceedings in Gary City Court and may not relitigate that issue in this civil proceeding for damages under 42 U.S.C. 1983.

The 5th Conclusion of Law is contradicted by the testimony of the defendants (Witnesses) Officer McClarine, Wilford, Phillips and Mr. Richard Comer. (con't)

Under Rule 52 Fed.R.Civ.P. the District Court is required to enter Findings of Facts and Conclusions of Law in support of its dismissal of Cause H83-50.

The Findings of Facts and the Conclusions of Law entered by the District Court are neither relevant nor supported by the evidence of witnesses testimony during the trial.

The Criminal Court case (Cause No. CR81-2224, mentioned on the 5th Conclusion of Law) was dismissed September 30, 1982 for failure of the police Officers Charmayne McClarine, George Wilford and Orlando Phillips to appear as witnesses.

Reference page P-19

ARGUMENT

12) The District Court denied the plaintiff a trial by jury, refused to compel the defendants to provide discovery material for the plaintiff, dismissed the plaintiff's Cause H83-50, denied the plaintiff's petition for a new trial and entered unsupported Findings of Facts in support of the dismissal of Cause H83-50.

In depriving the plaintiff of his rights, the District Court has departed from the accepted and usual course of Judicial Proceedings and the Appeals Court in affirming its Judgment has sanctioned its departure, as to call for and exercise of the Supreme Court's Power of Supervision under Rule 17.1.(a) .

CONCLUSION

The Plaintiff Petitioner is respectfully suggesting that this case should be reviewed and is asking the Supreme Court to grant this Petition for Writ of Certiorari.

Respectfully,

Thomas R. Serrano

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Highland, IN 46322
Telephone: 219-924-9829

Jeanette F. Brummel

JEANETTE F. BRUMMEL
NOTARY PUBLIC STATE OF INDIANA
LAKE COUNTY
MY COMMISSION EXPIRES AUGUST 9, 1988

July 17, 1987

UNITED STATES COURT of APPEALS

FOR the SEVENTH CIRCUIT

Chicago, Illinois 60604

Submitted March 10, 1987*

April 2, 1987

unpublished order
not to be cited
per circuit rule 53

BEFORE

Hon. WALTER J. CUMMINGS, Circuit Judge

Hon. RICHARD D. CUDAHY, Circuit Judge

Hon. FRANK H. EASTERBROOK, Circuit Judge

THOMAS R. SERRANO,
Plaintiff-Appellant,

No. 86-2393 v.

CITY OF GARY, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of IND, Hammond Division

No. 83 C 50

James T. Moody, Judge

O R D E R

"Plaintiff-appellant, proceeding pro se, appeals from the district court's dismissal of his §1983 action pursuant to Fed. R Civ. P. 41(b) and from the denial of his motion for a new trial on the grounds that the district court (i) improperly denied him a jury trial and (ii) failed

to require defendants to comply with plaintiff's discovery requests. Judge Moody's final orders in this case thoroughly and, we believe, correctly address the errors alleged by plaintiff and, accordingly, we adopt the district court opinions as our own.[1] The order of June 23, 1986 treats the dismissal of plaintiff's case pursuant to Rule 41(b) and the order of July 29, 1986 deals with the denial of plaintiff's motions for a jury trial and for a new trial.

AFFIRMED.

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1 In his fifth conclusion of law in the order of June 23, 1986, Judge Moody held that Serrano was collaterally estoppel from relitigating the existence of probable cause for his arrest by virtue of his earlier failure to contest the ex parte determination of probable cause made by the Gary City Court. We express no opinion on the district court's collateral estoppel analysis and, instead, choose to affirm on the basis of facts evident in the record which indicate that defendants clearly had probable cause to arrest Serrano. The record demonstrates, and Judge Moody expressly found, that

Serrano fled from defendants who had been called to the scene to investigate the circumstances of an altercation between Serrano and another individual which, in turn gave rise to the events underlying this §1983 action.

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* After preliminary examination of the briefs, the court notified the parties that it had tentatively concluded that oral argument would not be helpful to the court in this case. The notice provided that any party might file a "Statement as to Need of Oral Argument." See Rule 34(a) Fed. R. App. P.; Circuit Rule 34(f). No such statement having been filed, the appeal has been submitted on the briefs and record.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

THOMAS R. SERRANO
Plaintiff

v.

CIVIL NO.
H 83-50

CITY OF GARY and OFFICERS CHARMAYNE McCLARINE, GEORGE WILFORD, AND ORLANDO PHILLIPS,
Defendants

O R D E R

"On June 10, 1986 this court conducted a bench trial in this action, brought by plaintiff Thomas R. Serrano against defendants City of Gary, and Officers Charmayne Mc Clarine, George Wilford, and Orlando Phillips. The court received evidence and heard arguments from the parties. At the close of the plaintiff's case, the defendants moved for dismissal pursuant to Fed.R.Civ.P. Rule 41(b) on the ground that upon the facts and the law the plaintiff had shown no right to relief. The court, having GRANTED the defendant's Motion, now enters the following Findings of Fact, Conclusions of Law, and Order of Judgment pursuant to Fed.R.Civ.P. Rule 52.

CONCLUSIONS OF LAW

1. "The plaintiff filed this action pursuant to 42 U.S.C. 1983 alleging violation of his federal rights under color of state law. This court exercises jurisdiction pursuant to 28 U.S.C. §§1331 and 1343.

2. To establish a cause of action under §1983 a plaintiff must establish that the conduct complained of was committed by a person acting under color of state law and that this conduct deprived the plaintiff of rights, privileges, or immunities secured by the Constitution of laws of the United States. Parratt v. Taylor, 451 U.S. 527, (1981).

3. As used in the phrase "under color of state law", the term "state" encompasses any political subdivision of a state, such as a county or city. Because the defendants acted as police officers pursuant to the authority of the City of Gary, they acted under color of state law.

4. To hold a municipality liable for a violation of §1983, the plaintiff must establish that the action of the employee which deprived him of his federal right was the result of a policy, practice or

custom of the municipality. Monell v. Department of Social Services of City of New York, 436 U.S. 658, (1978). Serrano did establish that the defendant police officers at all times acted pursuant to the policies and practices of the City of Gary Police Department. Thus, if the police officers' conduct had deprived the plaintiff of a federal right, the City of Gary could also have been held liable under 1983.

5. Serrano claims that the defendants deprived him of his Fourth Amendment right to be free from unreasonable seizures by arresting him without a warrant from a private business. The evidence at trial established that Serrano was arrested in the doorway of his store after he ran from police officers in the alley of 804 Broadway. The Gary City Court, a court of competent jurisdiction, has determined that the officers had probable cause to believe that Serrano had committed the crimes of disorderly conduct and resisting arrest. Serrano had a full and fair opportunity to litigate the probable cause issue in the criminal proceedings in Gary City Court and may not relitigate that issue in this civil proceeding for

damages under 1983. Guenther v. Holmgreen, 738 F2d 879, 883, (7th Cir. 1984). The police officers' arrest of Serrano did not violate federal law and does not provide the basis for recovery under §1983.

JUDGMENT - WITHOUT ORAL ARGUMENT
UNITED STATES COURT of APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
April 2, 1987
Before

Hon. WALTER J. CUMMINGS, Circuit Judge
Hon. RICHARD D. CUDAHY, Circuit Judge
Hon. FRANK H. EASTERBROOK, Circuit Judge

THOMAS R. SERRANO
Plaintiff-Appellant

No. 86-2393 vs.

CITY OF GARY, et al,
Defendants-Appellees

Appeal from the United States District Court for the Northern District of Ind. Hammond Division No. 83 C 50 Judge James T. Moody

This cause came before the Court for decision on the record from the United States District Court for the Northern District of Indiana, Hammond Division.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, with costs, in accordance with the order of this Court entered this date.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND, DIVISION

THOMAS R. SERRANO

v.

CITY OF GARY
CHARMAYNE McCLARINE
GEORGE WILFORD
ORLANDO PHILLIPS

JUDGMENT IN A CIVIL CASE

CASE NO. H83-50

Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that judgment be entered in favor of defentants The City of Gary, Officer Charmayne McClarine, Officer George Wilford, and Officer Orlando Phillips that this action is dismissed pursuant to Fed.R.Civ.P. Rule 41(b). The defendant' request for an award of attorney fees is DENIED.

FILED June 23, 1986

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

THOMAS R. SERRANO,
Plaintiff

v.

CITY OF GARY, et al,
Defendants

CIVIL NO. H83-50

O R D E R

This matter is before the court on the plaintiff's Petition for Jury Trial. The petition is DENIED.

Rule 38(d), Fed.R.Civ.P., provides that failure of a party to serve a jury demand within ten days of the service of the last pleading constitutes a waiver of trial by jury. Since the defendants filed their Answer to plaintiff's complaint on March 24, 1983, the plaintiff's petition for a jury is belated. The plaintiff has waived trial by jury.

ENTER: June 17, 1985

JAMES T. MOODY
JUDGE, UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

THOMAS R. SERRANO,

Plaintiff

-vs-

CITY OF GARY, et al.,

Defendants

CIVIL NO. H83-50

ORDER
OF SETTINGS
AND TO CONDUCT
PRELIMINARY PRETRIAL CONFERENCE

The court further ORDERS that the following settings be ENTERED of record in this cause by the Clerk.

(1) That a Bench/Jury trial be scheduled for the 9th day of June, 1986, as a 8th setting on a trailing calendar, to commence at 9 am;
(2) That a final pretrial conference be conducted in Chambers on the 1st day of May, 1986 at 2 pm;
(3) That all discovery be completed on or before January 31, 1986.

(con't)

The court will entertain no motion for continuance or an extension of time for making filings unless there is strict compliance with General Rules 7(c) and 11, and a showing of good cause for the same. Additionally, counsel and parties appearing pro se are ADVISED that this court will strictly enforce the provisions of its General Rules and the Federal Rules of Civil Procedure where the same become an issue in this cause.

ENTER: June 13, 1986

JAMES T. MOODY
JUDGE, UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

THOMAS R. SERRANO,
Plaintiff

v.

CIVIL NO. H83-50

CITY OF GARY, et al,
Defendants

O R D E R

It has come to the attention of the Court that its Order of January 30, 1986 incorrectly concluded that the defendant had not responded to the plaintiff's Motion to Compel Discovery. In fact, the attorney for the defendant, Theresa Springmann, had filed a Response to Request for Production of Documents and that response contained a detailed explanation of his good faith efforts to comply with the plaintiff's discovery requests. Thus, the Court erred ordering the defendant to comply strictly with the plaintiff's discovery requests, some of which were excessively burdensome or called for the production of undiscover-

(con't)

able material. Therefore, the portion of the Court's Order requiring the defendant to produce additional documents is hereby VACATED.

ENTER: February 3, 1986

JAMES T. MOODY
JUDGE, UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

THOMAS R. SERRANO,
Plaintiff

v.

CIVIL NO. H83-50

CITY OF GARY, et al,
Defendants

O R D E R

This matter has come before the Court on the plaintiff's Motion to Compel Discovery and the defendant's Motion to Compel Discovery and For Sanctions filed on November 11, 1985 and January 6, 1986, respectively. On December 13, 1985 the Court ordered the defendants to respond within five days to the plaintiff's Motion to Compel. Because the defendants have not responded, the plaintiff's Motion to Compel is GRANTED. The defendant is hereby ORDERED to produce to the plaintiff:

(a) a financial statement from Defendant City of Gary;
(b) a financial statement from each of the co-defendants;
(c) a list of the names and addresses of the police officers present at the arrest with their respective addresses;

(con't)

(d) a copy of the police record of T.J. Walton and Loretta Smith.

The plaintiff has not responded to the defendants' Motion to Compel Discovery and For Sanctions. The Court hereby GRANTS the Motion to Compel Discovery and DENIES the Motion to the extent that it requests the Court to impose sanctions against the plaintiff.

The plaintiff is hereby ORDERED to cooperate with the defendants' discovery requests, including the Notice for Deposition requiring the plaintiff's attendance for deposition of January 31, 1986. The plaintiff is ORDERED to attend the scheduled deposition and respond in good faith to any relevant questions to which he does not have a specific and articulated privilege.

ENTER: January 30, 1986

JAMES T. MOODY
JUDGE, UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

THOMAS R. SERRANO,
Plaintiff

vs CIVIL NO. H83-50

CITY OF GARY, et al,
Defendants

ANSWER TO DEFENDANTS' MOTION REQUESTING DOCUMENTS, MATERIAL AND ORAL EXAMINATION BY DEPOSITION FROM PLAINTIFF

1) The defendants have filed a motion in this court under cause H83-50, requesting from the plaintiff Thomas R. Serrano (Pro se) the following documents and material:

A - An oral examination by deposition
B - A written interrogatory
C - Production of documents
D - Award of fees for expenses incurred in filing the motion.

2) The plaintiff has no objection as to cooperate with the defendants in discovery if, by mutual agreement, both sides obtain the requested material under conditions that are just and proper.

3) In the past the defendants have claimed that they could not agree on a

(con't)

plan for discovery because there was not enough material (on their side) for discovery. Now that they have requested items A, B, C and D (that can be integrated with the plaintiff's suggested plan for discovery, an agreement should be possible.

Included is a letter (copy) of a simple, workable, fair plan (that the defendants refused to consider in the past) for their convenience.

FILED January 24, 1986

UNITED STATES OF AMERICA

CERTIFICATE

STATE OF INDIANA, COUNTY OF LAKE, ss:

I, Barbara Leek Wesson, Clerk of the City Court of the City of Gary, Lake County, Indiana, hereby certify that the attached and foregoing is a full, true, complete and correct copy of CR81-2224

STATE OF INDIANA

VS

THOMAS R. SERRANO
804 Broadway
Gary, IN

CHARGED:
DISORDERLY CONDUCT CL. B

FILED: June 9, 1981

DISPOSITION: Dismissed 9-30-82 by Judge Gerald Mecham

AS. SAME APPEARS OF RECORD

the original of which is now on file in the office of the Clerk of the City Court of the City of Gary, Lake County, Indiana.

IN WITNESS WHEROF, I have hereunto set my hand and affixed the official seal of the City Court of the City of Gary, Lake County, Indiana, this 21st day of March, 1986.